

Alena Kliková

REAL ESTATE CADASTRE AND REAL ESTATE REGISTRATION

As the introduction regarding the determining of Real Estate Cadastre and Real Estate Registration, it is useful to start with the history of real estate record-keeping and of registration of real estates and rights. Originally, there were two types of keeping the register of real estate based on the reason of existence of the said types of real estate registers. The first reason for real estate registers was connected with taxes and fees, the second was linked with the protection of ownership and other rights connected with real estates. Protection of ownership and other rights was the task of so-called public books (land boards, farm land books, registry of real property, railway books, etc.). The tax Register of Real Estate is represented by so-called land cadastres (1st Teresian Cadastre, 2nd Teresian Cadastre, Lords' Cadastre, New Joseph's Cadastre, Stable Cadastre, Land Cadastre). Between 1956 and 1960 so-called unified registration of land was put into practice. The subject of the stated registration was the use of real estates and not their ownership. Another type of register came into being between 1964 and 1992 and was called Register of Real Estates.

Currently, The Real Estate Cadastre of the Czech Republic is in charge of registering real estates. The Real Estate Cadastre of the Czech Republic is defined as a data base on real estates in the Czech Republic. The stated data base comprises their list, description, geometry, and position data. Part of the cadastre is the register of ownership and other rights to the real estates. The Cadastre is at the moment integrated, up-to-dated computer system on real estates. It is a part of the basic systems of public administration in the Czech Republic. It is interconnected, for example, with the Register of Inhabitants, and so on. The Cadastre is a source of information, which serves for protecting rights regarding real estates, for tax purposes, for environment protection, for protecting agricultural and forest land, mineral resources, cultural monuments, for scientific and statistical purposes, etc.

The Real Estate Cadastre of the Czech Republic is determined by the following legal regulations:

- Act No. 344/1992 Sb., On the Real Estate Cadastre of the Czech Republic (Cadastral Act), as subsequently amended,
- Act No. 265/1992 Sb., on registering ownership and other rights regarding real estates, as subsequently amended,
- Regulation No. 26/2007 Sb., as subsequently amended,
- Act No. 359/1992 Sb. on geodetic and cadastral authorities, as subsequently amended,
- Regulation of the Czech Geodetic and Cadastral Office No. 162/2001 Sb., on providing information from the Real Estate Cadastre of the Czech Republic, as subsequently amended, and
- Statutory rules No. 111/2001 Sb. on comparing and taking information from the Real Estate cadastre of the Czech Republic and The Register of Inhabitants, as subsequently amended.

Public administration authorities in charge of the activities regarding the management of the Cadastre are determined by Act No. 359/1992 Sb., as subsequently amended. Public administration authorities in charge of providing the services of the Real Estate Cadastre are:

The Czech Geodetic and Cadastral Office – the central organ of state administration. It is located in Prague. It is presided by a chair who is appointed and recalled by the government of the Czech Republic - The Real Estate Cadastre of the Czech Republic provides and manages central administration of the Real Estate Cadastre of the Czech Republic, co-ordinates research in geodetic and cadastre, assures and co-ordinates international co-operation of the Czech Republic in the said field, operates other organs of the state administration in the field of geodetic and cadastre, verifies the management of central data base of the Real Estate Cadastre of the Czech Republic, and carries out further management and organization tasks within the section.

The Geodetic Office – another administrative authority with competence within the republic. It is located in Prague. The Geodetic Office carries out, e.g. administration of geodetic foundation of the Czech Republic, administration of basic state map works and theme state map works determined by the Office, or fulfils other task within the geodetic field, entrusted from The Czech Geodetic and Cadastral Office, etc.

Geodetic and Cadastral Inspectorates – are local administrative authorities. Inspectorates can be found in Brno, České Budějovice, Liberec, Opava, Pardubice, Plzeň, and in Prague. Each stated inspectorate carries out activities within their districts. Geodetic and cadastral inspectorates fulfill

mainly control and monitoring activities regarding the administration of cadastral offices, regarding geodetic activities performed for the Real Estate Cadastre. They further deal with disorders within geodetic field and perform tasks from the Czech Geodetic and Cadastral Office.

Cadastral Offices – are administrative organs established within regions. Regional operation of the said organs is determined in appendix No. 2 of the Act No. 359/1992 Sb. There are 14 cadastral offices for individual regions of the Czech Republic:

- Cadastral Office for Jihomoravský region located in Brno
- Cadastral Office for Olomoucký region located in Olomouc
- Cadastral Office for Královéhradecký region located in Hradec Králové
- Cadastral Office for Jihočeský region located in České Budějovice
- Cadastral Office for Karlovarský region located in Karlovy Vary
- Cadastral Office for the capital city Prague located in Prague
- Cadastral Office for Liberecký region located Liberec
- Cadastral Office for Plzeňský region located in Plzeň
- Cadastral Office for Pardubický region located in Pardubice
- Cadastral Office for Středočeský region located in Prague
- Cadastral Office for Ústecký region located in Ústí nad Labem
- Cadastral Office for Moravskoslezský region located in Opava
- Cadastral Office for Vysočina region located in Jihlava
- Cadastral Office for Zlínský region located in Zlín.

Cadastral offices carry out the administration within the Real Estate Cadastre through their **cadastral workplaces**, which are the internal organizational units of cadastral offices. Their names and places are published in the Collection of Law – notification The Real Estate Cadastre of the Czech Republic under No. 10/2004 Sb.

Cadastral offices are organs which carry out the principal part of state administration regarding the section of Real Estate Cadastre. Cadastral offices carry out state administration of the Real Estate Cadastre of the Czech Republic through locally appropriate cadastral workplaces in compliance with Act No. 265/1992 Sb. on registering ownership and other subject rights regarding real estates of the Czech Republic, as subsequently amended. Cadastral offices register, e.g. ownership and other subject rights regarding real estates, changes in data in

the Real Estate Cadastre, determine permission to enter new information or erase information regarding ownership and other subject rights linked with real estates in the Real Estate Cadastre. Furthermore, cadastral offices, through locally appropriate cadastral workplaces, correct consistency of Real Estate Cadastre with the real state, namely designate changes in the data in the cadastral base of operation, etc. Further activity of cadastral offices, carried out through locally appropriate workplaces, is enabling Real Estate cadastre inspections, providing information, land certificates, copies from the data base of geodetic information, descriptive information, and plot identification in the form of public documents, etc.

The Real Estate Cadastre is (as mentioned above) a computer registration system comprising data on real estates within the territory of the Czech Republic as well as right referential to them. The register within the Real Estate cadastre is divided according to subject and content.

According to subject the following items are registered within the real estate Cadastre:

- Pieces of land,
- Buildings connected with land by solid base, i.e.
 - buildings allocated land registry or registration number,
 - buildings not allocated land registry or registration number,
- Flats and non-residential spaces according to Act No. 72/1994 Sb., which determines some co-ownership relations regarding buildings, flats, and non-residential spaces - Act on flats ownership,
- Buildings, flats and non-residential spaces under construction, which will be liable to registration after having been finished, if demanded by the owner of the real estate property or another party,
- Buildings, flats and non-residential spaces under construction, which will be liable to registration after having been finished, in connection with formation, change or cessation of subject right to them,
- Buildings connected with land by solid base, listed in the special legal enactment (Act No. 183/2006 Sb. – Construction Law).

Pieces of land registered in the Real Estate Cadastre are divided into agricultural and non-agricultural land. Agricultural pieces of land are arable land, hop-fields, vineyards, gardens, orchards, permanent grassy plantations. Non-agricultural pieces of land are forests, water spaces, built-up areas, courtyards, and other spaces. All real estates are registered in the Real Estate Cadastre according to cadastral areas where they are located.

The registration of real estate properties in the cadastre involves also registration of rights connected with the said properties. Registered are:

- Legal relationships registered due to Act on registering ownership and other subject rights linked with real estate properties,
- State organizations management regarding state property (according to Act. 219/200 Sb., On the Property of the Czech Republic and its acting in legal relationships, Act. No. 113/1993 Sb., on Children and Youth Fund, as subsequently amended),
- Right to permanent use of a real estate property,
- Management of real estates within the Czech Republic,
- The capital city of Prague municipal districts authorization of municipal districts to manage the entrusted property of the capital city of Prague,
- Statutory cities municipal districts authorization to manage the entrusted property of the statutory cities,
- Authorization of a budgetary and subsidized organization established by a municipality or a municipal district of the capital city of Prague or statutory cities to manage the entrusted property of a municipality,
- Appurtenance to an organizational unit of a legal entity, if such is registered in a commercial or other register determined by law and the head of such an organizational unit is authorized to manage the real estate property registered in the Real Estate Cadastre on behalf of the above stated legal entity appurtenant to the organization unit,
- Further subject matters according to the character of the registered property due to the Cadastral Act a part of the Real Estate Cadastre.

Activities carried out by the Real Estate Cadastre are determined in the Cadastral Act No. 344/1992 Sb., as subsequently amended, and these are further adjusted in notice No. 26/2006 Sb. regarding reviewing the Real Estate Cadastre, correcting mistakes in the cadastral operation system, providing data from the Real Estate Cadastre, verifying copies of documents, renewing cadastral operation, comparing data of the Real Estate Cadastre with the data in the Register of Inhabitants, and carrying out registration into the Real Estate Cadastre. Below see a delimitation of the types of activities provided by the Real Estate Cadastre.

Review of the Cadastre

Review of the cadastre is ensuring compliance of the data in the Real Estate Cadastre with the actual state.

Correcting Mistakes in the Cadastral Operation System

Further activity managing the Real Estate Cadastre carried out by cadastral offices is correcting mistakes in the cadastral operation system. Correction can be carried out either after a written proposal of an owner or another party, or without a proposal (by virtue of office). Appurtenant cadastral office removes erroneous data, which came to being due to an obvious mistake running the cadastre or due to inaccuracy in measurement, etc. from the cadastre.

Providing Information from the Real Estate Cadastre

Data in the Real Estate Cadastre are public and it is possible to see them and make copies of them. Providing data from the cadastre is determined by regulation § 22 Act No. 344/1992 Sb., Cadastral Act, as subsequently amended, further, it is determined in detail by enactment No. 162/2001 Sb., on providing information from the Real Estate Cadastre.

Providing information from the Real Estate Cadastre can be executed in several forms. It is possible to provide information free of charge or for a charge, which is determined according to the Act on Administrative Charges in the wording of later regulations. Free of charge is looking into the Real Estate Cadastre or getting spoken information. Further forms of providing information from the Real Estate Cadastre are charged. Furthermore, forms of providing information from the Real Estate Cadastre are divided into information in the form of public documents and other forms. Providing information from the Real Estate Cadastre in the form of public documents:

- Providing extracts,
- Providing copies,
- Identifying plots.

Other forms:

- Providing verified copy or copies of documents from a collection of documents,
- Enabling distance access,
- CD, etc.¹

¹ Further see J. Jurníková, et al. Správní právo – zvláštní část, Brno 2004, p. 321.

Verifying Copies of Documents

Cadastral office verifies copies of documents on legal relationships from collection of documents of the cadastre and the registry of real property.

Renewing Cadastral Operation System

Renewing cadastral operation system is one of further activities of cadastral offices. Renewal of cadastral operation system is launched by appropriate cadastral office without any proposal. Cadastral operation system can be renewed by various ways:

- New mapping,
- Digitalizing,
- Land arrangement,
- Investigating communal lines.

Comparing the Data in Real Estate Cadastre with the Register of Inhabitants

One of further activities within the administration of the Real Estate Cadastre is comparing and taking over information of the Real Estate Cadastre of the Czech Republic and the Register of Inhabitants. The said activity as well as the course of it is determined by statutory rules No. 111/2001 Sb., on comparing and taking over information of The Real Estate Cadastre of the Czech Republic and the Register of Inhabitants. The compared items are so-called basic identification data of people, i.e. name, surname, birth number, date of birth, and residence.

Registration of Ownership and Other Subject Rights Regarding Real Estates

This is the most significant activity of the Real Estate Cadastre. This activity is linked with major consequences, i.e. assignments of ownership and other rights regarding real estates. Registration of the stated rights is determined by the Act No. 265/1992 Sb., on registration of ownership and other rights regarding real estates, as subsequently amended, and further implementation notice No. 26/2007 Sb., further Administrative Procedure Code No. 500/2004 Sb., as subsequently amended. Administrative Procedure Code is used as a subsidiary enactment if two special legal enactments do not determine particular procedure for cadastral office activities.

Registration into cadastre according to the above stated Act is:

- A. an entry,
- B. a record,
- C. a note,
- D. or their erasure.

The subject of registration into the Real Estate Cadastre is legal relationships relevant to a particular real estate property. Subject rights registered into the Real Estate Cadastre are listed in the Law. According to the Act on registration, the following are registered into the Real Estate Cadastre:

- Ownership right,
- Lien,
- Right of use, and
- Pre-emption right.

ad A) Registration of Entries

Registration of an entry is the most important registration into the Real Estate Cadastre as the constitutional effects of registration into the cadastre lead to origination, change or extinction of a right. Registration is either an entry or an erasure of ownership or other subject rights regarding real estates, if law does not determine otherwise, i.e. that the registration is to be carried out as a record or a note. Registered rights come into being, change or cease to be on the registration date into the cadastre. Legal effects of a registration come into being on the basis of legitimate decision on permitting a registration. The day of the legal effect is the day when the entry is delivered to the cadastral office.

Subject of the entry – are the rights registered in the cadastre. These are the rights of ownership, lien, use and pre-emption right with the effects of tenure, also further rights listed in the Act on the Real Estate Cadastre. These rights are registered into the Real Estate Cadastre mostly on the basis of bilateral agreements and contracts (e.g. purchase contract, agreement on common property in marriage settlement, etc.).

The participants of the proceedings on permitting registration of a right into the Real Estate Cadastre are those whose right are to be determined in the proceedings.

The proceedings on registration of a right is launched after a proposal of a participant of the administrative proceedings. If the proceedings will be started

upon a proposal of a participant it is always within the disposal of the participant². The details and content of a proposal for registration of a right into the Real Estate Cadastre are determined by the law. The proposal for a registration must be supported by:

- a contract, which is a document for registration,
- power of attorney, if the participant of proceedings is represented,
- extract from the Business Register, if the participant of proceedings is a legal entity, and other documents demanded by law.

Cadastral office examines if the proposed entry fulfils the conditions determined by law. These conditions must be examined to the date of filing the proposal for a registration. In case that all the above stated legal conditions for registration of a right are fulfilled, appropriate cadastral office determines through their cadastral workplace that registration of the right is permitted. In case that the conditions for registration of a right are not fulfilled, the proposal for a registration of a right is declined. If registration of a right is permitted, appropriate cadastral office carries out the registration in the appropriate file, further, designates the so-called clause on permitting registration of a right.

Each proposal for launching proceedings regarding permission to register an entry in the Real Estate Cadastre is charged, by Act No. 634/2004 Sb., on administration charges, as subsequently amended, amounting to 500 Czech Crowns.

ad B) Registration of Records

Record into the Real Estate Cadastre is used for registration of ownership rights and other subject rights regarding real estates which came into being, changed or became extinct by law, by a decision of a statutory organ, by a knock down at a public auction, etc. These rights are registered into documents executed by state organs and on the basis of other documents. Documents executed by state organs must be sent to the cadastral office so that the registration is carried out within 30 days after their coming into legal validity or within 30 days after their execution. Cadastral office is obliged to examine if the decision or other submitted documents are legible, legitimate, do not contain mistakes or any other incorrectness. If cadastral office finds out that the submitted documents have any deficiency, they return it to the person who executed the document, designating the deficiencies. If the document is flawless, cadastral office carries out the record. After the registration of a right the office notifies all the parties.

2 Further see S. Kadečka, et al.. Meritum Správní právo, Praha 2007, p. 202.

Registration by a record is possible, e.g. in case of a right of use determined by law, i.e. in case of a right of use of a person who dies.

ad C) Registration of Notes

A note can be characterized as an entry which serves for designating a fact regarding a real estate property or a person and does not influence existence (coming into being or extinction) of a right. A note is of informational character. The significance of a note is to indicate possible legal flaws of a real estate property. Legal effects of registration of a note are declaratory.

A note is registered by a cadastral office on the basis of a delivered decision or court notice, tax administrator, executor, etc.

Streszczenie

Kataster Nieruchomości w Republice Czeskiej jest systemem informacyjnym i rejestracyjnym, który ujawnia prawa własności nieruchomości na terytorium Republiki Czeskiej oraz ich właścicieli. Każda osoba (bez względu na obywatelstwo lub narodowość) ma prawo wglądu do wszystkich informacji dotyczących wymienionych nieruchomości i ich właścicieli. Rejestr nieruchomości istnieje w Republice Czeskiej od wielu lat i ma pewne tradycje. Obecny Kataster jest prowadzony w sposób kompleksowy, systematyczny i szczegółowy z wykorzystaniem dokładnych metod pomiarowych. W razie niezgodności z rzeczywistą sytuacją i informacjami zgłoszonymi w Katastrze Nieruchomości, urząd katastralny dysponuje szeregiem instrumentów do skorygowania tej niezgodności.

Kataster Nieruchomości Republiki Czeskiej jest systemem publicznym regularnie aktualizowanym. Dane zawarte w katastrze są podzielone według ich rodzaju na wpis, rejestrację i notę. Każdy z wymienionych rodzajów jest szczegółowo określony przez prawo.